



## **B Lab Controversial Issues Statement - Companies Serving Governments Tied to Human Rights Violations**

### **B Lab's Approach to Controversial Issues and B Corp Certification**

As for-profit companies that meet the most rigorous standards of overall social and environmental performance, accountability, and transparency, Certified B Corporations are leaders in the movement to use business as a force for good.

Whether through information a company provides in its [Disclosure Questionnaire](#), an issue raised by a third-party through B Lab's formal [Complaints Process](#), or public discourse on B Corp certification requirements and standards, difficult and complex questions regularly arise as to how controversial issues in the world of business should affect a company's eligibility for B Corp certification. Judgments on these issues are then determined by B Lab's independent [Standards Advisory Council](#) as part of a disclosure review process.

B Lab's Disclosure Questionnaire forms the basis of the disclosure review process, which covers sensitive industries, practices, outcomes, and penalties and is based on third party screenings and standards like the IFC Excluded Industries List and International Labor Organization Conventions. Recognizing that any list of sensitive issues may be incomplete, however, B Lab also reserves the right to conduct similar reviews on issues that are not currently featured in the Disclosure Questionnaire, but are deemed subject to material stakeholder concern and a potential violation of the B Corp movement's Declaration of Interdependence.

When new industries or issues where a decision making model has not already been developed arise, B Lab conducts research into the issue in order to guide the Standards Advisory Council's decision. Research is based on secondary sources compiled by B Lab staff, with the overall intent of identifying and understanding the different concerns related to the industry or issue and the different perspectives of stakeholders. This includes a review of press related to the industry and its impact, how the issue is covered by other standards, existing public policy and public policy recommendations from non-profit organizations and other topical experts, examples - potentially both good and bad - of actors within the industry, as well as interviews with expert stakeholders. This content is in turn used to develop the framework for Standards Advisory Council review, and determines the types of questions that individual companies are required to answer as part of their review.

Particularly when it comes to industries that are controversial, there is a natural and healthy tension between the inclination to exclude all companies in those industries from eligibility for B Corp Certification, and *the need for leadership* that has the potential to transform the culture, behavior, and impact of those industries. While B Lab and its [Standards Advisory Council](#) may determine that an industry as a whole is ineligible for certification because of its negative impacts or practices, they also recognize that in controversial industries it may be possible for companies to be meaningfully managing those potential negative impacts or controversies. In these circumstances, the need may be greatest to distinguish between good and bad actors, as well as good, better, and best performance by using rigorous standards of verified social and environmental performance, legal accountability, and public transparency. All stakeholders are best served by the existence of credible and transparent standards that facilitate improved policy, investment, purchasing, and employment decisions.

Along with the recognition that there are many diverse and reasonable perspectives as to what contributes to a shared and durable prosperity for all, B Lab and its Standards Advisory Council will make determinations regarding eligibility for B Corp Certification and, if eligible, will require companies in controversial industries, with controversial policies, or engaged in controversial practices to be transparent about their practices and how they work to manage and mitigate concerns. B Lab will also document and share these positions publicly in order to enable all stakeholders, including citizens and policymakers, to make their own judgments about a company's performance, as well as further thoughtful, constructive public discussion about important issues. Existing B Lab statements and frameworks on controversial issues are available [here](#).

These frameworks, like B Lab's standards generally, are works in progress, and we look forward to improving upon them in the future. B Lab invites other perspectives as it continues to refine its views and, hopefully, contribute to a constructive conversation about the role of business in society.

Independent of eligibility for B Corp Certification, all companies in any industry are able to use the [B Impact Assessment](#) as an internal impact management tool to assess and improve their overall practices, and/or adopt a stakeholder governance legal structure (such as [benefit corporation](#)) appropriate to the company's current corporate structure and jurisdiction.

If you have questions or comments about B Lab's approach to the below issues, please email B Lab's Standards Management team at [standardsmanagement@bcorporation.net](mailto:standardsmanagement@bcorporation.net).

## **Companies Serving Governments Tied to Human Rights Violations**

Companies that serve governments with ties to alleged human rights violations are controversial due to the potential for their products or services to be misused in ways that either directly perpetuate or are complicit in such violations. Authoritarian governments in particular have a greater risk of being tied to human rights issues, and a similar risk is present in other political environments when a government has faced credible allegations of human rights violations.

In response to these risks, B Lab and its independent Standards Advisory Council have rendered the following decision regarding eligibility for B Corp Certification:

*Companies serving authoritarian governments and other governments with ties to human rights violations are ineligible if there is a substantial risk that the company's products or services are tied to or complicit in human rights violations. Specifically, such risk will be evaluated based on (1) the specific geographic regions where the company operates, (2) the nature of the products and services provided by the company, and (3) the specific government programs that the company serves.*

*Companies where a possible risk is identified but determined to be low risk are eligible to certify with incremental disclosure on their B Corp Profile describing the specific geographic regions in which they operate, the nature of the products or services rendered, and the specific departments of the government that they serve. In addition, B Lab will conduct ongoing monitoring of such companies in the form of an annual review, and the company will be expected to conduct their own internal monitoring regarding potential misuse of their products or services.*

## **Risks of Serving Authoritarian Governments and Other Governments with Ties to Human Rights Violations**

Authoritarian political systems are characterized by a concentration of power in the hands of a leader or a small elite, where the freedom to create opposition political parties or other alternative political groupings is either limited or nonexistent.<sup>1</sup> The Economist Intelligence Unit's Democracy Index<sup>2</sup>, which is an annual measure of the state of democracy in 167 countries globally, offers the following characteristics of an "authoritarian regime:"

"In these states, state political pluralism is absent or heavily circumscribed. Many countries in this category are outright dictatorships. Some formal institutions of democracy may exist, but these have little substance. Elections, if they do occur, are not free and fair. There is disregard for abuses and infringements of civil liberties. Media are typically state-owned or controlled by groups connected to the ruling regime. There is

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<sup>1</sup> <https://www.britannica.com/topic/authoritarianism>

<sup>2</sup> <https://www.eiu.com/topic/democracy-index>

repression of criticism of the government and pervasive censorship. There is no independent judiciary.”

These characteristics of authoritarian governments conflict with several universally accepted human rights as outlined in the UN’s Universal Declaration of Human Rights, including the right to periodic and genuine elections (Article 21), the right to freedom of opinion and expression (Article 19), the right to a fair and public hearing by an independent and impartial tribunal (Article 10). In addition, in seeking to monitor and restrict dissenting political opinions, authoritarian governments may infringe upon other fundamental human rights, such as equality before the law (Article 7), no arbitrary arrest, detention, or exile (Article 9), and no arbitrary interference with one’s privacy, family, home, or correspondence (Article 12).<sup>3</sup>

Given such human rights risks, companies doing business with authoritarian states have a higher risk of being tied to human rights violations. In addition, due to the concentration of political power that is characteristic of such states, there is a general risk that these companies could be subject to undue influence by the government.

Risk of human rights violations do not, however, only exist under authoritarian regimes. Companies that do business with democratic governments may also face similar risks, as credible allegations of human rights violations also exist against such governments. For example, Human Rights Watch has documented the human rights violations associated with the rights of non-citizens in the United States and the government’s enforcement of immigration policies.<sup>4</sup>

In either case, the level of risk for a particular company will vary by context. Factors that might affect the risk for a particular company include:

- **The level of government influence over the company** - This may be informed by the type of government being served, the volume of the company’s business conducted with the government, the particular terms of government contracts, or state ownership in the company. Companies that have a higher possibility of being influenced by government actors, such as those serving authoritarian governments or state-owned enterprises, present a greater human rights risk.
- **The specific geographic areas where products and services are used** - Country-level reports on the current state of human rights can serve as a general indicator of risk, but there may also be regions within a country that are of particular concern. For example, allegations of forced relocation may be tied to specific geographic regions. Companies operating in or serving local governments in these geographic “hot spots” present a greater human rights risk.

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<sup>3</sup> [https://www.ohchr.org/EN/UDHR/Documents/UDHR\\_Translations/eng.pdf](https://www.ohchr.org/EN/UDHR/Documents/UDHR_Translations/eng.pdf)

<sup>4</sup> <https://www.hrw.org/world-report/2020/country-chapters/united-states#bcfbc5>

- **The potential uses of the company’s product and/or services** - It is important to consider the *potential* use, as products and services may be used in ways that cause harm even if the intended use is not inherently harmful. Higher risk companies might include those in industries that are already considered controversial, such as defense and weapons companies, as well as other industries that might directly or indirectly facilitate human rights abuses by the state, such as surveillance technologies, data collection and analysis services, and media companies. On the other hand, companies with products and services designed to create a positive impact, such as improving health outcomes or poverty alleviation, would generally represent a lower risk.
- **The specific government departments that a company is connected to** - Human rights allegations may be tied to a specific government department or government program, in which case products and services provided directly to those departments/programs would pose a greater human rights risk. Similarly, some government departments may have an inherently higher risk. For example, departments focused on security, defense, and immigration will generally have a greater human rights risk than departments focused on education or housing.

While there is a clear human rights risk for businesses working with authoritarian states, some argue that in these circumstances there is simultaneously a need and opportunity for responsible businesses that can influence positive social and environmental change. In addition, it is important to note that not all businesses working with such governments are inherently harmful, and that some authoritarian governments have departments or programs that are designed to create positive outcomes for their citizens. Through third-party reports that are available regarding human rights issues around the world, it is possible to differentiate companies and governments in terms of the level of human rights risk they are associated with.

Organizations that focus on business and human rights generally agree that working within these types of political environments is a necessary approach for addressing human rights issues. The UN Guiding Principles on Business and Human Rights, which is the most widely accepted international framework outlining businesses’ responsibilities on human rights, focus on the concrete policies and practices businesses should take to address human rights risks. The UN Guiding Principles do not take an exclusionary approach to high risk environments such as authoritarian states. Rather, they acknowledge that businesses must make greater efforts in challenging environments in order to combat human rights violations effectively.<sup>5</sup>

### **Rationale for the Standards Advisory Council Decision**

The Standards Advisory Council acknowledges that companies working with governments associated with human rights violations, including authoritarian governments, have an inherent risk of either directly perpetuating or being complicit in human rights abuses. This decision also recognizes that it is possible for companies working with such governments to be meaningfully

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<sup>5</sup> <https://www.bsr.org/files/work/bsr-human-rights.pdf>

managing the potential human rights risks associated with their products and services, and that in these types of political environments there is a particular need to distinguish between good and bad actors.

As such, when considering eligibility for B Corp Certification, these companies should be evaluated based on specific criteria in order to determine the degree of human rights risk associated with their operations. These criteria—which should include the type of relationship a company has with the government, the specific geographic area where it operates, the potential uses of its products or services, and the specific government departments that it works with—allow for an informed decision regarding a particular company’s human rights risk and subsequent eligibility for B Corp Certification.

Companies should, at a minimum, acknowledge their human rights risks and be able to demonstrate that they have conducted sufficient due diligence to mitigate them. For companies deemed eligible by the Standards Advisory Council, the incremental disclosure requirement creates public accountability and transparency regarding their specific human rights risks and their efforts to monitor the potential misuse of their products or services on an ongoing basis. However, in cases where there is a high risk that cannot be sufficiently managed or direct evidence of ties to human rights violations, a company would not be eligible for B Corp Certification without ceasing its involvement with such products, services, and/or clients.

The state of human rights around the world is constantly changing and there are a broad range of stakeholders from the public and private sector focused on ensuring the protection of individuals’ human rights. By establishing additional evaluation criteria for companies that work with governments associated with human rights violations, B Lab and its Standards Advisory Council can consider the most up-to-date research and stakeholder input regarding global human rights issues. For those companies deemed eligible to certify, the additional requirement of an annual review on this topic allows for ongoing human rights developments to be considered on a regular basis.

Per B Lab’s statement on [B Corps and Human Rights](#), this decision allows B Lab and its Standards Advisory Council to consider whether a company is eligible for certification or whether incremental actions, such as remediation, need to be taken *regardless* of the company’s positive impact score in the B Impact Assessment, and acknowledges that direct ties to authoritarian governments in particular are a material human rights risk.

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The decision of the Standards Advisory Council has been informed by independent research conducted by B Lab and stakeholder consultations including human rights experts and practitioners.

The disclosure requirement in cases where a company is eligible is intended to recognize that

reasonable people may disagree with the position outlined by the Standards Advisory Council and should have the relevant information to make their own judgment regarding the company's social and environmental performance.

This statement is effective as of May 2020 until further judgment from the Standards Advisory Council.

Please send your feedback or questions to B Lab's Standards Management Team at [standardsmanagement@bcorporation.net](mailto:standardsmanagement@bcorporation.net).